

MINUTES
WV RACING COMMISSION
Tuesday, October 22, 2013
WV Lottery Conference Room

The WV Racing Commission met on October 22, 2013 to conduct business and consider administrative matters. Roll call was taken and present were Chairman Jack Rossi and Commissioner Bill Phillips and Commissioner Greg McDermott via conference call. Counsel was represented by Kelli Talbott.

Approval of September 24th minutes

The Commissioners and legal counsel received the minutes from the September 24th meeting prior to this meeting. Mr. McDermott moved to accept the minutes, seconded by Mr. Phillips. The Commission approved the September 24th minutes.

Approval of October 9th minutes

The Commissioners and legal counsel received the minutes from the October 9th meeting prior to this meeting. Mr. Phillips moved to accept the minutes, seconded by Mr. McDermott. The Commission approved the October 9th minutes.

Executive Director's Report
Jon Amores

Jon Amores, Executive Director, stated this afternoon he and Counsel will be attending the Interim Rules Committee meeting for the Thoroughbred rules. There is a memo in the binders primarily of Larry Carraher's correspondence with Kevin Crum at RCI. The two major components of RCI's software package involve rulings and licensure. The rulings portion is fairly easy for the Racing Commission to begin to use. The licensure requires a little more due diligence because of the custom license software we are currently using. A punch list has been put together of items that our licensing software does now and this list will be sent to RCI to see if they can do these things with their software. Lastly, the merger between PNGI Charles Town Gaming Limited Liability Company and PNGI Charles Town Gaming LLC was officially consummated October 18th and the new entity is in the process of being licensed. Commissioner Phillips commented he raised the issue at the last meeting about going through RCI. His understanding from the presentation he was given in July by RCI was that if a license is issued in another state, we can find that out today. Furthermore, his understanding is that when a license would occur with RCI, the updating would happen instantaneously and not require the manual updating we are currently doing. He asked Mr. Amores for a pro and con of this system vs. what we are doing and what we've been working on since March. He feels after his discussion with Mr. Crum at RCI that the system they have is very flexible to our needs and we need to move on with this process.

Auditor's Report
Becky Carnefix

Becky Carnefix stated for the capital improvements update, Charles Town submitted 1 request for reimbursement in September, encompassing several projects, and totaling \$401,738.97. Supplemental purse award claims for the second quarter fiscal year 13 were sent to the Auditor's office for payment on October 11th. Total claims paid for Charles Town were \$484,825.70, and total claims paid for Mountaineer were \$49,230.60. Commissioner Phillips inquired about the entering of daily race results by the Thoroughbred Development Fund Clerks and if this information is being entered manually? Ms. Carnefix replied yes they are entered manually. Commissioner Phillips asked if anyone has thought to look at Equibase and download this information instead of entering it manually. Ms. Carnefix stated this is an option that has been discussed internally. Chairman Rossi asked Ms. Carnefix to pursue this option.

Accountant's Report
Joe Moore

Joe Moore stated live handle decreased 26% from August 2013 but the export handle continues to increase and was up nearly 11.5% from August 2013. Revenue generated from live and simulcasting racing was down 6% from August 2013. He has provided the Commissioners with copies of the fiscal year 2013 annual audit in the binders for their review. Financial projections are also included in the binders.

Legal Update
Attorney General's Office

Kelli Talbott stated with regards to the Thoroughbred Rules, she and Mr. Amores met with the Committee back in September and agreed to make a couple technical changes per Counsel's request. One was to correct a typo and the other one dealt with an amendment to the rule that allows the stewards of the Racing Commission to take action against someone who files a bad faith complaint against another permit holder. Sam Burdette's case is scheduled to take place Monday, October 28th. Chris Groves case was appealed to Kanawha County and she has already filed the record and is working on some pleadings to be filed in that case as well. Schweitzer case has a scheduling order and she will be filing briefs in that case in the coming months. Commissioner Phillips asked if in September Counsel in the Legislature suggested some changes and those were provided to the Executive Director? Ms. Talbott responded yes, Counsel called them and asked them to meet so she and Mr. Amores went up and met with him in September and at that time he identified the typo for her to fix and discussed the bad faith issue with her and Mr. Amores.

Approval of 2013 Annual Audit

Joe Moore stated the annual audit was filed October 15th. Mr. Phillips made the motion to approve the 2013 annual audit, seconded by Mr. McDermott. The Commission approved the 2013 annual audit.

Occupational Permit Review: Curtis Weaver

Mr. Amores stated he's applying for a permit to serve as a groom and he had a felony on his record for a marijuana charge in 2009. He is on probation till 2016 and has completed a substance abuse program. He has had no further charges on his record since his arrest in 2009 and we have a letter of recommendation from the Board of Stewards at Mountaineer for his permit to be reinstated. Mr. Amores stated he concurs with the Board of Stewards at Mountaineer, with the qualification he is subject to random drug testing by the Stewards, and any refusal to take the test or any positive test is subject to a six month suspension. Mr. McDermott made the motion to reinstate the permit, subject to the conditions just stated. Seconded by Mr. Phillips. The Commission approved the reinstatement of the occupational permit of Curtis Weaver.

Occupational Permit Review: Darryl Brinkley Occupational Permit Review: Shane Wright

Mr. Amores stated all of the information had not yet been received for the review of the occupational permit of Shane Wright.

Darryl Brinkley stated he provided all of his paperwork for the review of his occupational permit and hoped the Commission would do so today. Chairman Rossi stated some of the information was not in their binders that was brought to his attention this morning and he would like to be able to have that provided to the other Commissioners before they make an action.

Mr. McDermott made the motion that both of these items be deferred until a later date, seconded by Mr. Phillips. The Commission deferred both items until a later date.

Hearing Examiner's Recommended Decision: Scooter Davis and Doug Shanyfelt

Ms. Talbott stated this was an appeal involving a program trainer scheme. Scooter Davis was suspended by the Commission for a six month period for multiple medication infractions. During the suspension he was caught having care, custody, and control of horses that were under the trainership of Doug Shanyfelt. Since Mr. Davis was under suspension at the time, there was no license to revoke so the Stewards deemed him ineligible for future licensure and they suspended Doug Shanyfelt for a year. Those actions were appealed and went before the Hearing Examiner. The Hearing Examiner has recommended to uphold the Stewards rulings. Mr. McDermott made the motion to approve the Hearing Examiners recommended decision, seconded by Mr. Phillips. The Commission approved the Hearing Examiners recommended decision.

Hearing Examiner's Recommended Decision: Stephen Pollard

Ms. Talbott stated this was an ejection appeal. Mr. Pollard was ejected indefinitely by Charles Town racetrack when it was discovered he was saddling a horse he wasn't training. The Hearing Examiner has recommended to uphold the ejection, but put an endpoint on the time period, and he recommended 12/24/2014 as the endpoint. Mr. McDermott made the motion to accept the Hearing Examiners recommended decision, seconded by Mr. Phillips. The Commission approved the Hearing Examiners recommended decision.

Approval of 2014 Mardi Gras kennel contract

Mike Staats stated the contract is basically the same as last year, with two additions. The first addition was drug testing for kennel employees and the second addition was a valid driver license for kennel employees. Mr. McDermott made the motion to approve the 2014 Mardi Gras kennel contract, seconded by Mr. Phillips. Motion passed.

Joint request of Charles Town Races and CTHBPA to amend live racing schedule

Erich Zimny stated Charles Town met with the Horsemen's Committee and they jointly made the decision for the purposes of purse monies and the shortage of horses to not race the first three Tuesday's they have scheduled in November, and it was a mutual decision between both parties. Mr. Phillips made the motion to approve the amended live racing schedule, seconded by Mr. McDermott. The Commission approved the amended live racing schedule for Charles Town Races.

Charles Town Racetrack, Capital Improvement Request, \$268,300 for repairs to storm drain pond

Charles Town Racetrack, Capital Improvement Request, \$44,332.10 for Ford F350 truck and snowplow/spreader

Charles Town Racetrack, Capital Improvement Request, \$16,864 for mobile heated cabinets for Terrace Dining Room

Charles Town Racetrack, Capital Improvement Request, \$25,000 for Clubhouse "C" door re-roofing project

Charles Town Racetrack, Capital Improvement Request, \$6,434 for portable action station for Terrace kitchen

Becky Carnefix stated the request for repairs to the storm drain pond is the area located in the barn area and catches a lot of drainage from the barn area and stables. She has reviewed pictures of this area and what the project is going to do and has also reviewed the bids received and recommends for approval.

The request for the truck and snowplow/spreader will be used for track maintenance to remove snow from the track. She has reviewed the bids and recommends for approval.

The request for the mobile heated cabinets for the Terrace Dining Room are 4 additional hot boxes needed for the Terrace Dining Room renovations. She has reviewed the bids received and recommends for approval.

The request for the Clubhouse "C" door re-roofing project was reviewed and is recommended for approval.

The request for the portable action station for the Terrace kitchen is also part of the renovations being done in the Terrace Dining Room. She has reviewed the bids and recommends for approval.

Mr. Phillips made the motion to approve the requests, seconded by Mr. McDermott. The Commission approved the requests.

Mardi Gras Racetrack, Capital Improvement Request of \$1490.25 for installation of new gutters on two kennels

Becky Carnefix stated this project was not submitted by Mardi Gras to the Commission for pre-approval prior to being completed so this is an actual reimbursement request rather than a pre-approval of a project to take place. Documentation for the project has been reviewed and she recommends for payment of \$1490.25. Commissioner Phillips inquired as to the delay in timing from the date of the request and it being brought before the Commission for approval. Ms. Carnefix responded this project and two others were submitted at the same time and she reviewed them all as one instead of individually bringing each of them before the Commission for approval. In addition, she had been working with representatives from the track since August to obtain the required information needed to complete her review. Mr. Phillips made the motion to approve the payment, seconded by Mr. McDermott. The Commission approved the payment of \$1490.25.

Mardi Gras Racetrack, Capital Improvement Request of \$22,223.01 for construction of outside concessions area (Director of Audits recommendation \$21,956.19)

Becky Carnefix stated this project was for the construction of an outside concessions area located on the apron of the racetrack. This project also was not submitted by Mardi Gras to the Commission for pre-approval prior to being completed, so this is an actual reimbursement request as well. The documentation for the project has been reviewed and she recommends payment of \$21,956.19, which is a difference of \$266.82 from the original request for a few minor items disallowed in her review. Mr. Phillips made the motion to approve the request, seconded by Mr. McDermott. The Commission approved the payment of \$21,956.19. Chairman Rossi stated the submissions of requests and approvals from the Commission should be done in a timely fashion.

Mardi Gras Racetrack, Capital Improvement Request of \$566,399.08 for construction of buffet (Director of Audits recommendation to prorate reimbursements)

Becky Carnefix stated each Commissioner was provided with a memo in their binders summarizing this project with her recommendation. She stated there are representatives from Mardi Gras present at the meeting if they have questions concerning this project. Commissioner Phillips asked what kind of process is gone through, as the auditor, to determine that these capital improvements submitted for approval are racing related, or do we have a process? Ms. Carnefix replied the capital improvement policy defines that the improvements must benefit racing or racing patrons. Commissioner Phillips then asked what is the process used to determine these projects are racing related? Ms. Carnefix stated for the most part she uses her professional judgment. Mr. Amores stated sometimes what occurs is there is a gap between the request and how a project appears and in those instances Ms. Carnefix asks for

pictures, makes site visits to the track if necessary, inquires of the Stewards/Judges for additional information, etc. to get a better understanding of the project being requested to determine if it is directly benefitting racing or racing patrons. Chairman Rossi stated that in the past the Commission has requested of both Mountaineer and Charles Town to give us an allocation plan of what was applicable for horses, which they provided. Do we have an allocation plan for Mardi Gras as to what is greyhound racing vs. what is casino? Ms. Carnefix stated she has not seen an allocation plan and that is part of her recommendation for this project. Mr. Amores commented this project is similar to what occurred last year with Mountaineer and their request for a water softener project when an allocation was used for reimbursement purposes. Mardi Gras should provide the Commission with an allocation plan for the next meeting letting us know what percentage they feel benefits racing and the Commission will consider at that time whether to reimburse capital improvement funds. Bob Lagg, General Manager Mardi Gras, stated from a philosophical standpoint they are trying to enhance the experience of Mardi Gras by adding new amenities to that side of the building. They just recently worked out an agreement with the WV Lottery to allow for families with their minor children to traverse from the hotel through the casino floor to access not only the track, but also the First Turn Restaurant and buffet area as well. Chairman Rossi stated his feeling is the Commission has set a precedent with others and they may need to ask Mardi Gras for some type of allocation plan and delay this item until the next meeting. Mr. Phillips made the motion for this item to be tabled until an allocation is developed for this particular project and appropriate action can be taken by the Commission, seconded by Mr. McDermott. The Commission deferred this item until the next meeting.

Commissioner Phillips stated where it's appropriate, memos should be put in the file as to how the determination was made by Ms. Carnefix that the requests are in fact racing related rather than just including a copy of the request itself so the Commissioners know the determination was not based on her professional judgment but that it has a significant impact in a racing related manner. Chairman Rossi agreed and asked Ms. Carnefix to work on this for future meetings. Commissioner Phillips added it might make sense to add some language regarding this issue in the Capital Improvement policy. Chairman Rossi suggested Ms. Carnefix work with Commissioner Phillips on developing this process and changing the policy if needed.

Resolution honoring the life and service of former Commission Chairman Harry L. Buch

Mr. Amores read the resolution honoring former Commission Chairman Buch. Mr. McDermott made the motion to approve the resolution. Mr. McDermott then commented he was lucky enough to be a friend of Mr. Buch's and he was remarkably energetic, engaged and a kind gentleman. He was a player in the game of life and certainly loved racing. His commitment and service to racing was so absolutely exceptional that he has in addition to the motion to commemorate Mr. Buch's life, Commissioner McDermott made the motion to authorize the Executive Director to study options for some appropriate gesture that the Commission might undertake to memorialize Mr. Buch, beyond the commemoration that was just adopted. Mr. Phillips seconded both motions. The Commission approved the resolution and authorized Mr. Amores to study options to memorialize Mr. Buch.

Public Comments

Chairman Rossi introduced the President and General Manager of Wheeling Island, Osi Imomoh. Mr. Imomoh thanked the Commission for the opportunity to meet them today and is looking forward to making racing better and the challenges ahead.

Jon Cavacini, President WV Racing Association, commented on the capital improvements issue and stated he liked Commissioner Phillips' idea of putting in writing or a policy the ways of determining how these capital improvement dollars should be expended at each of the tracks. He asked that as the Commission and the Auditor proceed down this path of trying to formulate a policy the General Managers or the Administrators of the tracks be taken into consideration and have the ability to comment on some of the policy concepts being developed because they may have a different perspective. Secondly, he raised the issue of interpreting when something is "pro-racing." Depending upon how much of that has to do with racing at each one of the properties, there are going to be different ideas and different concepts about what really helps racing. The important thing is the Commission work with the people at the facilities before it is put into policy. The idea of the concept is correct, he just asks that in the conversations the tracks have people that are able to communicate and express their viewpoint before it's put in writing what the policy is going to be. Commissioner Phillips commented what he really had in mind was when a request is made the organization making the request outline in their narrative how this really helps advance racing and/or the person at the Racing Commission has the responsibility in reviewing this to put in some sort of narrative as to how they justify that for benefitting racing. What is important is the necessity of this narrative in justifying these improvements. Chairman Rossi commented he realizes it's difficult to differentiate benefits between the two (racing and gaming) but to make some reasonable estimates or some reasonable assumptions is what the Commission is asking for.

Randy Funkhouser commented they are appreciative of the approval for the request today for the truck and snowplow/spreader and that the laws are pretty clear on this type of request.

Next meeting

The next meeting is tentatively scheduled for November 19, 2013.

Adjournment

Motion was made by Mr. Phillips to adjourn, seconded by Mr. McDermott. Meeting adjourned.